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Reflections on the Lower Court System; the Development of a Unique Clinical Misdemeanor and a Public Defender Program

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During the past three years the University of Minnesota Law School and the Minnesota State Public Defender have developed a unique educational and service program in the Hennepin County Misdemeanor courts. The results of the three years of experimentation are particularly significant in view of the recent decision by the United States Supreme Court in *Argersinger v. Hamlin*,[1] and the enormous growth of law school clinical programs. The unique characteristics of the Hennepin County Public Defender Misdemeanor Program and its interrelationship to the law school clinical misdemeanor course will be discussed throughout this Article. The Minnesota experiment should provide helpful insight to law school misdemeanor programs and public defender programs now struggling into existence.

Observers of the lower courts throughout this country agree that the lower courts are in miserable condition. Their plight has been ignored by the organized Bar Associations, avoided by middle class Americans, and merely tolerated by the judges, prosecutors, and defense lawyers who work in them. The appalling conditions have been the subject of numerous investigations, criticisms and dismay by government commissions and citizen task forces. For the most part, the findings and recommendations of investigators and critics have gone unheeded.[2]

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1. 407 U.S. 25 (1972). *Argersinger* held that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." *Id.* at 37. *See* note 6 *infra*.

2. *See generally* S. BING & S. ROSENFELD, THE QUALITY OF JUSTICE IN THE LOWER CRIMINAL COURTS OF METROPOLITAN BOSTON, A REPORT BY THE LAWYER'S COMMITTEE FOR CIVIL RIGHTS UNDER LAW TO THE GOVERNOR'S COMMITTEE ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE (1970); L. DOWNIE, JUSTICE DENIED: THE CASE FOR REFORM OF THE COURTS (1971); Katz, *Municipal Courts—Another Urban Ill*, 20 CASE. W. RES. L. REV. 87 (1968); REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (KERNER REPORT) (1968); H. SUBIN, CRIMINAL JUSTICE IN A METROPOLITAN COURT (1966); TASK FORCE ON ADMINIS-

Thousands of citizens are first brought before the lower courts either for trial of misdemeanors and petty offenses or for preliminary hearings when charged with felonies. While the work of these courts may be "petty" with respect to the type of offenses and to the penalties imposed, it nevertheless has a tremendous impact on citizens having their first and perhaps only contact with the criminal justice system. The types of charges lodged in these courts are as broad as the imagination: speeding, vagrancy, indecent conduct, minor assaults, drunk driving and a multitude of other crimes. Most of the citizens appearing before the lower courts are relatively poor and a vast number are non-white. They are usually unaware of their basic constitutional rights and ignorant of the consequences of a guilty determination by a judge in these courts.

Only a small proportion of lawyers practice in these courts, largely for economic reasons. In Hennepin County, Minnesota, for example, the most populated county in Minnesota and one of the largest in the United States, a reasonable estimate would be that less than five percent of the practicing attorneys in the county have any regular contact with criminal matters before the County Municipal Court. Far too often, attorneys with large, prestigious law firms who possess the ability to effect major change are completely unaware of the conditions in the lower courts.

The advent of defender systems in some lower court systems throughout the country has undoubtedly produced some outstanding and dedicated lawyers. However, because of incredible caseloads and a staff too small to properly cope with the vast number of cases, they quickly become tired and discouraged. In many courtrooms, these once idealistic young advocates can be seen reluctantly participating in the dehumanization of citizens.

The lower courts operate with the most meager facilities and with the most inadequately trained personnel. A few have court administrators; most do not. Some have modern computerized filing systems; most still operate under nineteenth century conditions.[3] A burgeoning population and increasing ur-

TRATION OF JUSTICE, THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT, *The Courts* (1967); Hellerstein, *The Importance of the Misdemeanor Case on Trial and Appeal*, 28 THE LEGAL AID BRIEFCASE 151, 153 (Apr. 1970); Nutter, *The Quality of Justice in Misdemeanor Arraignment Courts*, 53 J.CRIM. L.C. & P.S. 215 (1962); Note, *Metropolitan Criminal Courts of First Instance*, 70 HARV. L. REV. 320 (1956).

3. Between 1970 and 1972, the author personally visited lower criminal courts in the cities of Albuquerque, New Mexico, Buffalo,

banization have aggravated rather than ameliorated these problems. Dedicated persons throughout these courts have become frustrated at the enormity of the problems confronted and exasperated at their inability to adequately deal with them. Practices by judges, prosecutors and defense attorneys which would be quickly condemned in the higher courts still exist in some of the lower courts.

In 1967, the Task Force on Administration of Justice of the "President's Commission on Law Enforcement and Administration of Justice" made the following observation:

> The Commission has gathered available studies and statistical data, and the staff has made brief field studies of the lower courts in several large cities. The inescapable conclusion is that the conditions of inequity, indignity, and ineffectiveness previously deplored continue to be widespread.[4]

What was said then remains true today.

It is doubtful that any program of crime prevention will be effective without a massive overhaul of the lower criminal courts. Many of the citizens who find themselves in these courts interpret the experience as an expression of indifference to their situation and to the ideals of fairness, equality and rehabilitation professed in theory but almost always denied in practice.

Argersinger v. Hamlin[5] openly invites an effective two-pronged attack on the injustice that exists in the lower courts. The opportunity exists for law schools throughout the nation to marshal the ability, enthusiasm and vigor of their students in the defense of misdemeanants, while simultaneously educating these prospective members of the bar in the actuality of ethical lawyering. The fashion in which this invitation, albeit challenge, is met will be critical to the improvement of the criminal

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New York, Boulder, Colorado, Cleveland, Ohio, Chicago, Illinois, Detroit, Michigan, Denver, Colorado, Miami, Florida, New York, New York, San Francisco, California, and Washington, D.C. The condition of the lower courts in Chicago, Cleveland, Detroit, New York City and Washington, D.C., was horrible. The remaining court systems had not degenerated to the point where "justice" existed in name only, but signs of decay were evident. Boulder, Colorado, had one of the better lower courts observed by the author. The Hennepin County, Minnesota, Municipal Court system is a superior system with a court administrator, computerized handling of court cases, and a vigorous public defender system. In 1972 Hennepin County was cited by the North American Judges Association for distinguished contribution to the efficient administration of justice. *See* 28 MINN. BENCH & BAR 35 (January, 1972).

4. TASK FORCE ON ADMINISTRATION OF JUSTICE, THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT, *The Courts* 29 (1967).

5. 407 U.S. 25 (1972).

justice system. If law students, law schools, and law teachers fail to seize the opportunity for education, service and reform provided by the Supreme Court in *Argersinger*,[6] little hope would remain that confidence in the lower court system could ever be restored. There would be even dimmer hope that the badly needed, massive overhaul of the lower court system would ever be effectively accomplished.

In Hennepin County, Minnesota, we have had over three years to experiment with, and develop, a law school clinical misdemeanor course and an effective public defender misdemeanor program. The goal of the clinical misdemeanor course has been the education of law students while that of the public defender program has been effective legal assistance to the poor of the county.[7] After three years, we believe that we have developed a combined misdemeanor-defender program which accomplishes both of these goals, and at a substantial savings to the University of Minnesota Law School and to the taxpayers of Hennepin County who provide the funds for the salaries of the Defenders.[8] The remainder of this Article traces the program's evolution and examines the reason for its success.

In 1967, the Minnesota Supreme Court surprisingly established a court rule requiring that counsel be appointed in all misdemeanor cases where the defendant might be incarcerated.[9]

6. In his concurring opinion in *Argersinger* Mr. Justice Brennan stated: "I think it plain that law students can be expected to make a significant contribution, quantitatively and qualitatively, to the representation of the poor in many areas, including cases reached by today's decision." *Id.* at 41.

7. The University of Minnesota has consciously avoided the tendency of some clinical programs to allow the service function to override the educational function. Clinical work which is not carefully supervised and is not tied into the law school curriculum may result in law students performing routine, tedious noneducative tasks. *See* Gorman, *Clinical Legal Education: A Prospectus*, 44 S. CAL. L. REV. 537, 559 (1971); COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, CLINICAL LEGAL EDUCATION IN THE LAW SCHOOL CURRICULUM 22 (1970).

8. The University of Minnesota Law School Clinic, by conservative estimate, saves the taxpayers of Hennepin County $75,000 a year because of the free legal assistance provided by its law students, Clinical Professor, volunteers and by paraprofessional undergraduate students who participate in the misdemeanor program. The trial supervision provided by the county defender corps saves the law school about $30,000 each year.

9. State v. Collins, 278 Minn. 437, 154 N.W.2d 688 (1967); State v. Borst, 278 Minn. 388, 154 N.W.2d 888 (1967); State v. Illingworth, 278 Minn. 434, 154 N.W.2d 687 (1967). By 1970, 31 states had extended the right to counsel to defendants charged with crimes less serious than felonies. Comment, *Right to Counsel: The Impact of Gideon v. Wainwright in the Fifty States*, 3 CREIGHTON L. REV. 103 (1970).

Governmental units were unprepared and as a result there was little or no available money for the required counsel. Some judges and court personnel viewed the rule with hesitance or indifference. To some observers it appeared that many if not most of the entrenched court personnel desired to delay implementation as long as possible.

In Hennepin County, Minnesota, the initiative to implement the Supreme Court rule was jointly seized by the State Public Defender, Mr. C. Paul Jones, and the University of Minnesota Law School. With funds remaining from a Ford Foundation grant, the Defender hired two talented and highly experienced criminal defense lawyers on a part-time basis to staff the county misdemeanor courts. At the same time, students from the Law School were assigned to work with these defenders in a rather loosely supervised fashion through the school's fledging Legal Aid Clinic.[10] From January 1968 until the summer of that year, the work of the part-time defenders and the law students was carefully scrutinized and evaluated by both the Defender's office and the law school. By the summer of 1968, it became apparent that changes were necessary.

Utilization of part-time defenders was a mistake. On several occasions indigent defendants could not find the part-time defenders at their offices because they were at trial on civil matters or otherwise occupied on non-defender business. It became obvious that the caseload was far too great for part-time defenders. The defenders tried to restrict their part-time work to mornings and trial judges found it difficult to accept guilty pleas at arraignments and also impose sentences only during the morning court hours. Several cases of necessity were carried over from the court's morning arraignment session to the afternoon, forcing the part-time defender to remain in court all day. Law students received sporadic supervision at best. The dangers inherent in such a part-time system became apparent: in order to lighten the defender's trial caseload, there was an incentive to plead as many defendants guilty as possible and to encourage a more restrictive indigency standard.

10. The modern version of the University of Minnesota Law School Legal Aid Clinic began in 1957 and was run entirely by a board of student directors. No credit was given for student work until 1968; there was little supervision over student work by the law school faculty until 1969. The development of the Clinical Program was stimulated in 1969 by a three-year $40,000 grant from the Council on Legal Education for Professional Responsibility for the salary of one Clinical Professor.

Lack of a centralized office where clients could receive assistance, an increasing caseload, sporadic student supervision and the dangers inherent in the part-time defender concept caused the State Public Defender to replace the two part-time defenders with one full-time lawyer in the summer of 1968. The law school increased its role in the development of the Public Defender program by agreeing to furnish office space and secretarial assistance for the newly hired defender within the school's Legal Aid Clinic.

Significantly, the Defender decided to hire the finest attorney available at a salary comparable to that paid litigation attorneys with the best law firms in the community. In September of that year, a talented trial lawyer was hired at a substantial salary. The opportunity to do meaningful trial work, the excellent salary, and the attraction of being a part of the law school clinical program were the primary reasons an extraordinary lawyer was attracted to the program. The defender program also received county funds with which to pay the attorney.

In addition to the changes made by the Public Defender, the law school altered the student clinical course. An evaluation of the 1968 student work showed that it had been very poor. The naive notion that senior law students could adequately prepare and handle actual cases with minimal supervision was shattered. Unsupervised students conducting interviews often either failed to obtain important material facts or completely overlooked them. Few students knew how to prepare for trial. None had ever handled a live case from beginning to end; very few understood trial tactics. The law school thus promoted development of materials to educate students in basic legal techniques. A standard interview form was devised to help students record the facts gathered during an interview, to act as an outline to guide the interview and to provide a record of the case. Written materials designed to assist each student in the preparation of his case were also developed. A manual for the "Defense of Misdemeanor Crimes" was prepared and published by the Continuing Legal Education Center of the University of Minnesota.[11] The manual was designed for students in the Misdemeanor Program, but found widespread acceptance from members of the practicing Bar throughout the state.

11. R. OLIPHANT & R. SWANSON, THE DEFENSE OF MISDEMEANOR CRIMES IN MINNESOTA (1969). *See* R. OLIPHANT & T. TINKHAM, THE DEFENSE AND PROSECUTION OF MISDEMEANOR CRIMES AND MOVING TRAFFIC VIOLATIONS (1971).

Supervision over law student work has been continually increased since 1968. Currently, students receive three credits per quarter for their efforts in the clinical program.[12] They handle all Public Defender arraignments two days a week in Minneapolis Traffic and Criminal Misdemeanor Court under the direct supervision of a clinical professor.[13] A weekly seminar prepares them academically for their field work.[14] Thorough trial briefs are required of each student who is assigned a trial. All student trials are selected by the Clinical Professor, thus insuring that students handle the most challenging cases in the Public Defender files.[15]

Supervision is supplied from many places in this unique program. Two senior law students help administer the program and evaluate pre-trial student briefs.[16] They also prepare ros-

12. The misdemeanor clinical course can comfortably accommodate 35 students per quarter: a total of 105 students per year. All of the supervisory grades and evaluations are gathered in a single student folder along with a student's briefs, memorandums and motions; a final grade is based on all of these materials and an oral examination.

13. Various methods of supervising students handling arraignment have been tried. Supervision by part-time defenders in 1968 was disastrous. They had neither the time nor the patience to adequately supervise students who were assigned to handle arraignments. The excellent Public Defender staff which now functions as a part of the overall clinic program can adequately supervise arraignments, although the staff is often under too much pressure to work carefully with the students. The staff has a tendency to quickly move cases along. The best procedure for law schools adopting the Minnesota plan is to accept responsibility for one courtroom on one day each week and slowly expand representation as the program gains experience. The University of Minnesota Law School supplements the County Misdemeanor Public Defender Program but does not assume a direct service obligation. Students do not handle trials or arraignments during exam periods.

14. The most important goal of the law school clinical program has been the education of law students. The program provides students with both the opportunity to learn and exercise legal skills demanding technical competence and significant intellectual challenge. It exposes the law school community to legal problems of significant dimensions not covered in the regular curriculum. The program also presents an opportunity for scholarly research and data gathering. The classroom seminar and field work are fully integrated.

15. Selection of student cases is important. Students should never be assigned cases that have not been carefully screened. Cases in the Minnesota program are selected for students on the basis of their variety, the probability of going to trial, the difficulty of the legal issues involved, and the probability of success at trial. Students are never assigned cases with instructions that they must take them to trial at all costs. Cases are not taken to trial, as sometimes charged by judges, simply to give a student "practice."

16. The supervising senior law students are clinic directors. They are selected each year by a vote of the students in the particular clinic program and a screening committee composed of graduating directors.

ters, help supervise arraignments on Monday and Tuesday, and contribute to the development of the weekly seminar. Both student directors receive six academic credits for their efforts over a period of three quarters. They act in the capacity of Graduate Teaching Assistants and function extremely well in this role.

Supervision is also supplied by the corps of County Public Defenders at the trial stage of a student's case. The Public Defenders grade each student on various phases of his work.[17] Members of the non-clinical faculty assist on a regular basis in grading and evaluating a law student's pre-trial work. The number of non-clinical faculty members who are involved is determined by the number of students in the misdemeanor program.[18] A student thus has the benefit of a thorough critique of his work at every stage. He also gains the benefit of being subjected to varying viewpoints on how to prepare for and handle legal problems.

The Public Defender Staff has expanded since 1968, continually attracting the finest young legal talent in the state. It now boasts four full-time lawyers who are hired on one year non-renewable contracts, another unique aspect. The decision to limit their employment to one year was made in 1969 because the lawyers working in the program (there were then two) agreed that the demands placed on them over a twelve month period were so exhaustive as to substantially reduce their effectiveness. Subsequent experience has verified the wisdom of this decision. Also, an exchange program has been developed with the largest downtown Minneapolis law firm in which a member of its litigation department spends from six months to one year on leave to the Public Defender's office. Such an exchange arrangement clearly has great benefits and could be copied throughout the country.

The new directors take the misdemeanor course in the third quarter of their junior year. The student directors are an important ingredient in the success of any large program. They are not paid for their work, although they often intern during the summer months between their junior and senior year with the Public Defender for Misdemeanors.

17. The Public Defenders grade each student on his factual investigation, preparation of a trial brief, understanding of his legal defense, rapport with client, in-court presence with judge, opening argument, anticipation of state's case and overall handling of the case.

18. Several law school professors have participated in this phase of the program. It is one way in which supervision and quality control of student work can be assured. It also brings more of the law school faculty into a program than if total supervision were left to the clinical professors. A faculty member grades a student on the quality of his overall preparation, including the quality of the trial brief which he must prepare for every case.

The purpose of a defender program is to benefit the indigent defendant. A defender or law school clinical program which uses poorly prepared lawyers and poorly supervised law students for criminal defense work would further degrade the lower court system and reflect adversely on both the legal profession and the law schools. The Minnesota program has worked very hard to avoid the all too common reputation of mediocre legal representation for the poor. Throughout the three year development of the Public Defender program, it has been sheltered within the Law School Legal Aid Clinic of which it has been an integral part. The result has been to keep subtle political pressures which hamper reform and change from interfering with its growth and development.

However, there has been a strong undercurrent of opposition from a few members of the local bench. The exact reason for this judicial opposition is unclear. Possibly, the judges are irritated by the vigor of the defense, the brilliance of individual attorneys in the program, the care with which trials are handled or the fact that appeals are taken from "their" courts. Some have been made to look bad. One judge has indicated that the philosophy of the current elite public defender corps is incompatible with that of the bench. Public defenders, to his mind, apparently are supposed to exercise less vigor and apply lower standards for representation than members of the private bar. This viewpoint is antithetical to the Canons of Ethics of the American Bar Association and the basic premise which underlies the American system of justice.[19]

Equal justice under law is a fundamental tenet of our system of justice. This means that every individual is entitled to be treated in the same manner and afforded the same protections under duly enacted laws as any other individual. However, a wealthy man has all the advantages of the system as presently constituted. He can hire the best lawyer, pay the costs of pursuing every accessible legal avenue and generally avail himself

19. ABA CODE OF PROFESSIONAL RESPONSIBILITY, Canon 7 (1970), "A lawyer should represent a client zealously within the bounds of the law."

> The professional responsibility of a lawyer derives from his membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law; to seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue, or defense.

EC 7-1 (footnotes omitted).

of all the justice that money can buy. A poor man seldom has these advantages. His encounter with the judicial system, because he often lacks even adequate legal counsel, is likely to be painfully costly and very unpleasant. Far too many judges in the lower court system of this country fail to recognize these basic facts and ignore the basic tenet upon which the court system is founded.

Everyone realizes that it would be far easier on judges and prosecutors if public defenders requested fewer trials and entered more guilty pleas on behalf of their clients. The smooth resolution of cases would be expedited and there would be little chance of clogging or slowing the system of "justice." However, the indigent defendant's interest requires a public defender system capable of providing him all the advantages and opportunities available to a more affluent defendant. The problem with many lower court systems is that the interests of the indigent are far overbalanced by those of the judiciary which possess economic and political power. The judges' interests have thus prevailed.

From a trial judge's point of view, the appointment of the student-defenders will almost certainly increase the number of trials. A system that depends for survival on guilty pleas by 95 per cent of all defendants is threatened by any possible change in that statistic. However, there is no evidence that providing counsel will substantially change this figure; nor is there evidence in Hennepin County that the Public Defenders have brought the system to a halt.

An objection raised by some judges and prosecutors to the vigorous Hennepin County defender program is that technicalities are used to "get the guilty defendant off." No reasonably competent defense attorney would overlook the "technicality" of an invalid arrest where a search and seizure issue was present, or the "technicality" of a Miranda warning prior to a confession. Yet, when these issues are raised and a hearing demanded thereon by a public defender or law student, the attitude of some court personnel changes.

The Minnesota State Public Defender said in a speech a few years ago that the greatest problem in the criminal justice system is the quality of the prosecution.[20] The same statement can be made today. Although there are excellent prosecutors, many

20. Unpublished speech to members of the Minnesota State Bar Association, 1969, by C. Paul Jones, State Public Defender.

good ones leave the lower court system within a year or two despite comparatively high salaries. One reason is that the civil service system retains and locks in some inadequate and lazy individuals who eventually acquire seniority within that system. Another is the frustration seemingly inherent in their position. Thus, public defenders often win cases they would have lost but for an incompetent prosecutor. The answer, however, is to improve the quality of the latter, not reduce the effectiveness of the former. Ideally, students should not only continue with public defender work, but they should also apprentice as prosecutors.

Law student involvement in the lower court system via the clinical program creates greater long term interest in these courts and an awareness of their problems than would otherwise be the case. Many graduates of the clinical program will serve in the State Legislature and will possess the incentive, ability and understanding necessary to advance the cause of justice in the lower courts, partly because of that program.

A number of factors encourage the development of a strong law student misdemeanor course. One of the most important is a student practice rule allowing law students to handle live cases.[21] However, such a rule should be carefully drawn to avoid vesting broad discretion in the trial judge regarding the student function. For example, in Detroit, Michigan, some trial judges have interpreted the Michigan Student Practice Rule as giving them total discretion to remove a student at any stage of the proceedings. The rule is used to remove students from representing indigents whenever a jury trial demand is made. Where a defender system is controlled by the judiciary, it has less chance of objectively serving the indigent.

Another important consideration is the selection of a Clinical Professor to head the program. Ideally, he should have criminal trial experience, academic credentials acceptable to the law school faculty, the ability and willingness to write, and the talent to teach at both the practical and theoretical levels. Administrative ability, in addition to political acumen, is also necessary.

21. Minnesota's student practice rule was promulgated in June, 1967. It permits senior law students to appear as prosecutors or defenders in Municipal or any trial court in the state when the student has been approved for the work by the Dean of his law school, certified in writing by the Minnesota Supreme Court, and when his courtwork is supervised by a member of the State Bar of Minnesota. *See* 276 Minn. vii (1967).

An "In-House Program" is highly desirable because it allows close supervision over student work, control over the intake of cases and the maintenance of educational goals. "In-House" can mean two things: either an agency affiliated with a law school, both working jointly in the representation of indigent defendants, or a law school-oriented defender program with no outside agency affiliation. Where there is no outside agency affiliation, the costs of administering the program are normally very high, and therefore it is mutually beneficial for the law school and the outside agency to affiliate.

There is a potential conflict between the law schools which have an educational goal and outside agencies which have service as their goal. One method by which such conflict can be neutralized is the development of a mutually acceptable law school-centered defender program. The University of Minnesota has a joint agency-law school in-house program. The benefits to the University from such an affiliation are: (1) control over student work, (2) quality supervision of student work, (3) control over the types of cases and the number of cases each student handles, and (4) continual maintenance of the educational goals in the program. In addition, the agency staff usually provides supervision for all student in-court work, thereby reducing the cost of such a program to the law school.

The benefits to the agency from such an affiliation are: (1) use of an up-to-date law library, (2) large numbers of students to investigate and prepare for numerous trials in addition to preparation of briefs and motions, insuring adequate representation with a significant savings for the taxpayer, (3) the prestige of being a part of the law school, which helps attract highly talented lawyers to the agency, (4) ready access to an experienced trial lawyer in the clinical professor, and (5) insulation from the subtle political pressures which impede major reform to a greater extent than when its location is in or near the courthouse.

If a law school is going to develop an in-house program, it must assume responsibility for providing a full-time office for students and their clients, together with an adequate secretarial staff. However, financial considerations occasionally force law schools to develop farm-out programs, that is, the students are totally controlled by outside agencies. The law school benefits from this type of program since it is very inexpensive to run and entails few administrative difficulties.

During the past two years there have been evaluations of several farm-out clinical programs throughout the United States. Their results demonstrate that, despite the good intentions of both law schools and the outside agencies to which the students have been farmed, most programs function with erratic supervision, substantial student confusion and dismay over their role, and an obvious lack of educational goals. Such agencies have neither the time nor the pedagogical talent to develop a strong clinical program. Most outside agencies use and abuse students rather than educate them.[22]

Quality supervision of a student program is extremely important to its success. Experience demonstrates that students cannot perform adequately without a carefully structured and supervised program. Students do not have an "ear" for evidentiary objections and can hardly be expected to develop one in their brief exposure to the clinical program. Students have had little more than a brief theoretical grounding in trial tactics when they come to the clinical program; they are frequently unprepared for the unexpected. Prosecutors often will seize on the weaknesses of an inexperienced defender or unsupervised law student. Thus a student should never try a case or put in a plea of any kind without first conferring at length with his experienced supervisor. Students should also be evaluated at every stage of their work in the program. This means that evaluations are made on their pre-trial preparation (including interviewing), the trial work and post-trial work. No aspect of a student's efforts should be overlooked.

Although the student programs require a great deal of work and supervision on the part of the law schools to remain effective, it is obvious that many benefits derive from the use of the students. In Hennepin County, not only have student-defenders improved the quality of representation for indigents, but they are also graduating to become better trial lawyers, with a lasting awareness of the problems in the lower courts. They are more aware of the quality of the judiciary and have actively campaigned to replace judges they feel are not adequately serving the people. They have demonstrated to poor and minority

22. The author was permitted access to reports on all clinical programs funded by the Council on Legal Education for Professional Responsibility at the Council's headquarters in New York in the summer of 1971. In addition, he made on-site evaluations of clinical programs at the University of Detroit, Wayne State University, University of Toledo, Marquette University, University of Buffalo, and Case Western Reserve University.

defendants that the system can provide not only adequate but excellent representation for them as well as for the wealthy.

The law school curriculum has been altered to meet the needs of students involved in clinical work. If the law and the courts are to continue to respond to a changing society, the students should be consistently exposed to that society in which they will eventually work. A good clinical program simultaneously advances both of these goals.